

1 WATTS GUERRA LLP
Mikal C. Watts (*pro hac vice*)
2 Guy L. Watts II (*pro hac vice*)
Alicia O'Neill (*pro hac vice*)
3 Jon T. Givens (*pro hac vice*)
Paige Boldt, SBN 308772
4 70 Stony Point Road, Suite A
Santa Rosa, California 95401
5 Phone: (707) 241-4567
2561 California Park Drive, Suite 100
6 Chico, California 95928
Phone: (530) 240-6116
7 Email: mcwatts@wattsguerra.com

8 *Attorney for Numerous Wild Fire Claimants*

9 UNITED STATES BANKRUPTCY COURT
10 NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

11 In re:

12 PG&E CORPORATION

13 - and -

14 PACIFIC GAS AND ELECTRIC
15 COMPANY,

16 Debtors.
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Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**MOTION TO ALLOW/DEEM TIMELY
LATE FILING OF PROOF OF CLAIM
BY CATLIN RICE TUCKER, DARIAN
RAHGANI TUCKER, M.T., A MINOR,
C.R.T., A MINOR, AND CATLIN RICE
TUCKER & DARIAN RAHGANI
TUCKER TEES U/A DATED 10/19/2011,
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
MIKAL C. WATTS**

- 21 ☐ Affects PG&E Corporation
22 ☐ Affects Pacific Gas and Electric Company
23 ☒ Affects both Debtors

24 * All papers shall be filed in the Lead Case,
25 No. 19-30088 (DM).

Date: July 7, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor

Objection Deadline: June 23, 2020

26 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY COURT
27 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL INTERESTED
28

1 PARTIES:

2 Watts Guerra LLP, together with several other firms, represent thousands of victims of the
3 Fires started by PG&E in 2017 (generally referred to as the “North Bay Fires”) and 2018 (“Camp
4 Fire”) and 2019 (“Kincade Fire”).

5 Watts Guerra LLP respectfully files this motion on behalf of Catlin Rice Tucker,
6 Darian Rahgani Tucker, M.T., a minor, C.R.T., a minor and Catlin Rice Tucker & Darian
7 Rahgani Tucker TEES U/A dated 10/19/2011, (collectively, “Movants”) to deem timely late
8 filing of proofs of claims (“Motion”).

9 **I. SUMMARY OF ARGUMENT**

10 A proof of claim may be deemed timely upon a showing of excusable neglect and lack of
11 prejudice. In this case, due to a variety of stressors arising from the Tubbs Fire, Movants were
12 unable to timely file their proofs of claims. Because there is no danger of prejudice to the Debtors
13 as Debtors’ estates are solvent, and all creditors stand to be paid, the Motion should be granted to
14 allow these survivors to have their claims deemed timely. This Court must determine whether to
15 grant the Motion.

16 **II. FACTUAL BACKGROUND**

17 **A. Movants’ Claims Arising From Tubbs Fire¹**

18 Creditors, Catlin Rice Tucker, Darian Rahgani Tucker, M.T., a minor, C.R.T., a minor and
19 Catlin Rice Tucker & Darian Rahgani Tucker TEES U/A dated 10/19/2011 are survivors of the
20 Tubbs Fire that occurred in 2017. On December 12, 2019, attorney Noreen Evans forwarded via
21 email a contract and questionnaire for completion by the Movants. On December 15, 2019, the
22 Movants responded to Ms. Evans advising they were ready to move forward as clients with a PG&E
23 claim. On December 16, 2019, Noreen Evans responded via email advising the Movants, a fully
24 executed contract and questionnaire would be required. In mid-January, 2020, the Movants emailed
25 just to check in but failed to copy Watts Guerra. On May 9, 2020 and again on May 17, 2020,
26 Movants contacted Noreen Evans, regarding an update on their claim. It was determined that the
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28 ¹ See Ex. 1, Declaration of Mikal C. Watts.

1 executed contract and questionnaire for the Movants had never been received electronically by
2 Watts Guerra LLP.

3
4 On April 27, 2020, Watts Guerra LLP filed claim numbers 103519, 103520 and 103521
5 on behalf of Movants (“Subject Proofs of Claims”). True and correct copies of the Subject Proofs
6 of Claim are collectively attached to the Mikal C. Watts Declaration as Exhibit “A”.

7 **B. General Procedural Background**

8 On January 29, 2019, PG&E Corporation and Pacific Gas and Electric Company (“Debtors”
9 or “PG&E”) commenced with the Court voluntary cases (“Chapter 11 Cases”) under chapter 11 of
10 the United States Code (“Bankruptcy Code”). PG&E’s chapter 11 filings were necessitated by a
11 confluence of factors resulting from catastrophic fires that occurred in Northern California prior to
12 the Petition Date, and PG&E’s potential liabilities arising therefrom.

13
14 Since, the Debtors continue to operate their businesses and manage their properties as
15 debtors in possession pursuant to 11 U.S.C. §§ 1107(a) & 1108, the Debtors’ Chapter 11 Cases
16 are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the
17 Federal Rules of Bankruptcy Procedure (“FRBP”).

18 **C. Plan, Disclosure Statement, and the Solicitation Procedures Motion**

19 On January 31, 2020, as Dk. No. 5590, the Debtors filed an Amended Chapter 11 Plan
20 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated January 31,
21 2020.

22 On February 7, 2020, as Dk. No. 5700, the Debtors filed a Disclosure Statement for the
23 Amended Plan.

24 On February 19, 2020, as Dk. No. 5835, the Debtors filed Motion for Entry of an Order (I)
25 Approving Form and Manner of Notice of Hearing on Proposed Disclosure Statement; (II)
26 Establishing and Approving Plan Solicitation and Voting Procedures; (III) Approving Forms of
27 Ballots, Solicitation Packages, and Related Notices; and (IV) Granting Related Relief (the
28 “Solicitation Procedures Motion”).

On March 16, 2020, as Dk. No. 6320, the Debtors filed the Amended Chapter 11 Plan

1 Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March 16,
2 2020.

3 On March 17, 2020, the Solicitations Procedures Motion was approved. Since then, the
4 Disclosure Statement and Plan have been circulated for votes.

5 **D. Extended Bar Date for Fire Victim Creditors**

6 The deadline for filing proofs of claim with respect to any prepetition claim including, but
7 not limited to, all claims of Fire Claimants, Wildfire Subrogation Claimants, Governmental Units
8 and Customers, and for the avoidance of doubt, including all secured claims and priority claims,
9 against either of the Debtors was October 21, 2019 at 5:00 p.m. ("General Bar Date").

10 The deadline for filing claims was extended to December 31, 2019 ("Extended Bar Date"),
11 solely for the benefit of any non-governmental Fire Claimants who did not file Proofs of Claim
12 by the General Bar Date.

13 **III. Legal Argument**

14 In a Chapter 11 case, the time to file a proof of claim may be extended under certain
15 circumstances. Fed. R. Bank. Pro. 3003(c)(3); Fed. R. Bank. Pro. 9006(b)(1). The bankruptcy
16 court has "broad equitable powers" in a Chapter 11 case with respect to the timing requirement
17 for proofs of claim. *Pioneer Inventory Services v. Brunswick Associates Limited Partnership*, 507
18 U.S. 380, 389 (1993). All in all, Rule 9006(b)(1) allows "late filings caused by inadvertence,
19 mistake, or carelessness, not just those caused by intervening circumstances beyond the party's
20 control." *Id.*, at 381. Even a creditor that did in fact receive notice may file a proof of claim
21 notwithstanding the expiration of a claims bar date in a Chapter 11 case upon a showing of
22 "excusable neglect." *Id.* At 394-95 ("Had respondents here been prevented from complying with
23 the bar date by an act of God or some other circumstance beyond their control, the Bankruptcy
24 Court plainly would have been permitted to find 'excusable neglect' [under FRBP 9006].").

25 In considering whether a creditor's failure was the product of "excusable neglect," the court
26 should take "account of all relevant circumstances surrounding the party's omission," including
27 "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial
28 proceedings, the reason for the delay, including whether it was within the reasonable control of the

1 movant, and whether the movant acted in good faith.” *Id.* at 395; *see also Corning v. Corning (In*
2 *re Zilog, Inc.)*, 450 F.3d 996 (9th Cir. 2006) (noting *Pioneer*’s non-exhaustive list of relevant
3 factors). Again, a late-filed proof of claim is allowable where a creditor had actual notice of the
4 bankruptcy but, due to some external reason, failed to file a proof of claim or did not realize that
5 she had to, before the bar date. *See, e.g., ZiLOG, Inc. v. Corning (In re ZiLOG, Inc.)*, 450 F.3d 996,
6 1003-07 (9th Cir. 2006) (applying the *Pioneer* factors). All in all, Rule 9006(b)(1) allows “late
7 filings caused by inadvertence, mistake, or carelessness, not just those caused by intervening
8 circumstances beyond the party's control.” *Pioneer*, 507 U.S. at 381. Here, consideration of all four
9 *Pioneer* factors—as well as a fifth engrafted onto the *Pioneer* analysis by some courts—weighs in
10 favor of Movants.
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13 Because in this case there is no danger of prejudice to the Debtors, the first *Pioneer* factor
14 weighs overwhelmingly in Movant’s favor. Debtors’ estates are solvent, and all creditors stand to
15 be paid. *See, e.g., In re Best Payphones, Inc.*, 523 B.R. 54, 75-6 (Bankr. S.D.N.Y. 2015) and *In re*
16 *Sheehan Mem’l Hosp.*, 507 B.R. 802, 803 (Bankr. W.D.N.Y. 2014) (where the chapter 11 estate is
17 solvent, “the proper remedy for a late filing is not the expungement of a claim, but its allowance
18 as a tardily filed claim only.). Secondly, immediately, upon receiving all the necessary
19 information the Subject Proofs of Claims were filed. Thirdly, the delay in filing the Subject
20 Proofs of Claim is reasonable considering the estrangement of Movants and the accompanying
21 stress of relocating after the emotional trauma they experienced as survivors of the Tubbs Fire.
22 Lastly, any prospect of prejudice beyond solvency is unlikely given (a) distributions have not been
23 made; and (b) the value of Movants’ claims relative to the value of Debtors’ estates is low. *See,*
24 *e.g., In re Keene Corp.*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995) (size of the late claim in
25 relation to the estate is a consideration in determining prejudice).

26 **IV. Conclusion**

27 For the reasons set forth above, the Movants respectfully request that this Court enter an
28 order pursuant to Bankruptcy Rule 9006(b)(1) as follows:

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1. Granting the Motion;
2. Finding that Subject Proofs of Claims filed by Movants are to be allowed as having been timely filed;
3. Granting such other or further relief as the Court deems just and proper.

Dated: June 10, 2020.

Respectfully submitted,

WATTS GUERRA LLP

By: /s/ Mikal C. Watts
Mikal C. Watts